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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,840	07/11/2003	William Matthew Moscrip	031850/266928	7991

826 7590 09/16/2004

ALSTON & BIRD LLP  
BANK OF AMERICA PLAZA  
101 SOUTH TRYON STREET, SUITE 4000  
CHARLOTTE, NC 28280-4000

EXAMINER
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DAVIS, OCTAVIA L

ART UNIT	PAPER NUMBER
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2855

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/617,840	<b>Applicant(s)</b> MOSCRIP ET AL.	
	<b>Examiner</b> Octavia Davis	<b>Art Unit</b> 2855	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date 12/12/2003. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 7 – 11, 15 – 19, 23 – 26, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Vialletel et al.

Regarding claims 1, 2, 9, 10, 17 and 18, Vialletel et al disclose a gyratory shear press comprising a gyratory device 1, an open ended cylindrical mold 17 having a wall 9 defining an inner diameter, the mold being adapted to contain a sample 20 therein, a rigid disk-shaped plate 25 defining an axis and a periphery, the plate being disposed within the wall in communication with the sample and an inductive sensing device 56 operably engaged with the plate so as to be spaced apart from the wall, the sensing device being configured to produce a signal corresponding to the angle of the wall with respect to the axis of the plate, the signal thereby being indicative of the gyration angle of the mold (See Cols. 3 and 4, lines 28 – 50 and 57 – 62).

Regarding claims 3, 11 and 19, the sensing device 56 is operably engaged with the plate 25 about the periphery thereof such that the at least one inductive sensing device is disposed adjacent to and spaced apart from the wall 9 when the plate is disposed within the mold 17 (See Figs. 2 and 4).

Art Unit: 2855

Regarding claims 7, 15, 23 and 28, a receiving unit 62 receives the signal from the inductive sensing device, provides an indicia of the gyration angle of the mold and stores the signal in a computer-readable manner (See Col. 4, lines 57 – 62).

Regarding claims 8, 16, 24 and 29, the receiving device is remotely disposed with respect to the plate 25, wherein the signal is directed from the sensing device to the receiving unit by a transmission device 53 selected from the group consisting of a cable and a wireless data transmission system (See Col. 4, lines 28 – 30).

Regarding claims 25 and 26, the sensing device 56 is inserted into an open end 16 of the mold 17 such that the sensing device is disposed adjacent to and spaced apart from the wall 9 of the mold (See Col. 3, lines 40 – 44).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4 – 6, 12 – 14, 20 – 22 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vialletel et al in view of Brovold ((5,817,946).

Regarding claims 4, 12, 20 and 27, Vialletel et al disclose all of the limitations of these claims except for a teaching that the sensing device is comprised of a pair of spaced-apart inductive transducers configured such that an inductance sensed by each transducer varies as a

Art Unit: 2855

function of the angle of the wall with respect to the axis of the plate. However, Brovold discloses a gyratory compaction apparatus comprising a gyration compaction control module 24 which includes a first mold angle sensor 160 and a second mold angle sensor 166 engaged with a plate 42 (See Fig. 2), the sensors being linearly spaced apart and housed in a cylindrical housing 12 (See Cols. 8 and 9, lines 65 – 67 and 7 – 15).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Vialletel et al according to the teachings of Brovold for the purpose of, providing a simple, lightweight gyratory compaction testing machine which controls compression forces and maintains the angle of inclination precisely with minimal adjustment (See Brovold, Col. 3, lines 49 – 55).

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Pyle (5,824,913) teaches a portable combined gyratory compactor and extruder.

6. Any inquiry concerning this communication should be directed to Examiner Octavia Davis at telephone number (571) 272 - 2176. The examiner can normally be reached on Monday - Thursdays (9:00 - 5:00), Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz, can be reached on (571) 272 - 2180. The fax phone number for the organization where this application where this application or proceeding is assigned is (703) 872 – 9306.

Application/Control Number: 10/617,840


Page 5

Art Unit: 2855



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9/9/04

  
EDWARD LEEKOWITZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800